



# Commonwealth of Massachusetts State Ethics Commission

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**SUFFOLK, ss.**

**COMMISSION ADJUDICATORY  
DOCKET NO. 584**

## **IN THE MATTER OF ROBERT CHURCHILL**

### **DISPOSITION AGREEMENT**

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Robert Churchill ("Churchill") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On November 20, 1997, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Churchill. The Commission concluded the inquiry and, on April 22, 1999, found reasonable cause to believe that Churchill violated G.L. c. 268A.

The Commission and Churchill now agree to the following findings of facts and conclusions of law:

1. Churchill is, and was at all times here relevant, a lieutenant serving with the town of Randolph Police Department ("Police Department"). As such, Churchill is, and was at the times here relevant, a municipal employee as that term is defined in G.L. c. 268A, §1.

2. Churchill has been a Randolph police officer since 1977 and a lieutenant since 1992. Churchill's position is full-time and salaried. Churchill's appointing authority is the Randolph board of selectmen ("Board of Selectmen") and his supervisor is the Randolph police chief.

3. In 1996, Churchill supervised the Police Department's detectives unit and police prosecutors.

4. Randolph police prosecutors handle criminal cases for the Police Department at the Quincy District Court ("District Court"). Until late 1996, there was one police prosecutor, Detective William Batson ("Batson"). Batson has been a Randolph police officer since 1977 and a police prosecutor since 1992.

5. In addition to his supervisory responsibilities, Churchill is an experienced police prosecutor. Until October 1996, when a second police prosecutor was hired, Churchill filled in for Batson as police prosecutor whenever Batson was absent due to illness, vacation or any other reason.

6. During the late hours of April 17 and/or the early hours of April 18, 1996, Batson's seventeen-year-old son and two fifteen-year-old juveniles spray-painted graffiti on several buildings in Randolph. On one building, a Randolph Highway Department ("Highway Department") garage, Batson's son spray-

painted racist graffiti in letters large enough to be readable from an adjoining playground. At the other locations, including a warehouse at 61 Pleasant Street and a dumpster at another site, Batson's son spray-painted various other graffiti. In addition to the graffiti personally done by Batson's son, the two juveniles with him also spray-painted graffiti at the same locations.

7. The graffiti done at the Highway Department was reported to the Police Department by a Highway Department employee on April 18, 1996. The Police Department investigated and, by April 24, 1996, Batson's son and the two juveniles were identified by the police as the graffiti perpetrators.

8. On or about April 24, 1996, Batson's son was interviewed at the police station by the sergeant heading the investigation. Before he was questioned, Batson's son was told that he had been identified as a graffiti perpetrator. Confronted with this fact, Batson's son admitted to involvement in the April 17-18, 1996 graffiti, including that he personally spray-painted racist graffiti on the Highway Department garage. Thereafter, Batson's son identified graffiti done by himself and others at several Randolph locations, including 61 Pleasant Street.

9. Between April 24 and 28, 1996, the sergeant wrote a report of the investigation of the April 17-18, 1996 graffiti, which report became part of the Police Department's case folder on Batson's son's case. The report specifically described the racist graffiti Batson's son admitted to spray-painting on the Highway Department building and identified two other locations where he spray-painted graffiti which is not described.

10. As a result of the Police Department's investigation, Batson's son was summonsed to appear at the Quincy District Court to be arraigned on April 30, 1996.

11. As chief of the detectives unit, Churchill was informed of Batson's son's case while it was under investigation. Sometime prior to Batson's son's scheduled arraignment, Churchill read the police report on the case. From the report and other sources, Churchill was aware of the acts of graffiti committed by Batson's son, including the racist graffiti, prior to the scheduled arraignment.

12. On or before April 30, 1996, Churchill completed and signed as complainant an "Application for Complaint" form charging Batson's son with two violations of G.L. c. 266, §126B ("tagging property").<sup>1/</sup> This would have normally been done by Batson as the police prosecutor. Given, however, that Batson could not prosecute his son's case, Churchill took over the duties of police prosecutor on the case. On the complaint application form, Churchill identified the "Town of Randolph" and "Russo Products" as victims and stated that each had suffered property damage over \$250. At the time, Russo Products was a tenant at 61 Pleasant Street.

13. Batson accompanied his son to the District Court on April 30, 1996. Sometime prior to the scheduled arraignment, Batson and Churchill discussed Batson's son's case and Churchill agreed to resolve the case with diversion and dismissal under G.L. c. 276A, and court costs in the amount of ten days of community service. In agreeing to this disposition of the case, Churchill exercised the power to settle criminal cases of the police prosecutor, in which capacity he was then acting. The diversion and dismissal resolution was a lenient and desirable resolution of the case for Batson's son because it would leave him without a criminal record and would not require him to admit to having done the graffiti or to pay restitution.<sup>2/</sup>

14. During the morning of April 30, 1996, Churchill and Batson's son, accompanied by Batson, appeared before an assistant clerk-magistrate in the arraignment session. Churchill told the assistant clerk-magistrate that the case was being diverted and dismissed. The assistant clerk-magistrate entered the agreed-to resolution, and the matter was referred to the Probation Office. Due to the diversion and

dismissal, Batson's son was not arraigned. Based upon his experience, Churchill knew going into the arraignment session that in diversion cases an assistant clerk-magistrate generally enters the disposition agreed to between the police prosecutor and the defendant.

15. Churchill did not disclose to his appointing authority, the Board of Selectmen, that he was going to act as police prosecutor in a matter involving the son of a police officer with whom he had worked for nearly twenty years, nor did Churchill disclose to his appointing authority the terms on which he would resolve the case. Churchill also made no disclosure concerning this matter to his own supervisor, the police chief.

16. On or about May 2, 1996, the Norfolk County District Attorney ("District Attorney") first learned of the diversion and dismissal of Batson's son's case. Perceiving possible conflicts of interest in the handling of the case, and sensitive to the District Attorney's office's close working relationship with the Police Department, the District Attorney referred the matter to the Attorney General on May 3, 1996.

17. On June 6, 1996, the Attorney General moved to vacate the April 30, 1996 diversion and dismissal. The District Court subsequently vacated the diversion and dismissal, and a new summons issued against Batson's son. On October 16, 1996, Batson's son admitted in District Court to sufficient facts for a finding of guilty and the matter was continued without a finding for one year, with eighty hours (ten days) of community service (deemed served), \$50 in court costs, letters of apology to the victims and \$1,633 in restitution to the owner of 61 Pleasant Street.

18. General Laws chapter 268A, §23(b)(3) prohibits a municipal employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. Section 23(b)(3) further provides "[i]t shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion."

19. By acting as a police prosecutor in resolving a criminal charge against a fellow police officer's son, Churchill, knowingly or with reason to know, acted in a manner which would cause a reasonable person, having knowledge of all the relevant circumstances, to conclude that Batson and Batson's son could unduly enjoy Churchill's favor in the performance of his official duties. In so acting, Churchill violated G.L. c. 268A, §23(b)(3). This appearance problem was exacerbated by the facts that Churchill had served with Batson as fellow officers for nearly twenty years and that the diversion and dismissal with community service but no restitution was the most lenient resolution possible short of an outright dismissal.<sup>3/</sup>

In view of the foregoing violation of G.L. c. 268A by Churchill, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Churchill:

- (1) that Churchill pay the Commission the sum of five hundred dollars (\$500.00) as a civil penalty for violating G.L. c. 268A, §23(b)(3); and
- (2) that Churchill waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

**DATE: March 13, 2000**

<sup>1/</sup>“Tagging” is the criminal act of placing graffiti on public or private property in violation of G.L. c. 266, §126B.

<sup>2/</sup>Graffiti “taggers” are normally required to make their victims whole through restitution which entails either repairing the damaged property or paying for its repair. According to Churchill, he decided not to seek restitution as to the damage to town property because the town would benefit from the community service. Also, according to Churchill, he decided not to seek restitution regarding the privately owned building at 61 Pleasant Street because he understood that the graffiti in question had been painted on the rear wall of the building (which building he knew was located in an industrial area with the rear wall next to railroad tracks), and he knew the wall already had a considerable amount of graffiti on it, and that Batson’s son had done only a small portion of this new graffiti. Consequently, according to Churchill, he did not believe that Batson’s son should be required to pay restitution.

<sup>3/</sup>Churchill could have avoided violating §23(b)(3) by making a written disclosure of the relevant facts to his appointing authority (the selectmen) before participating in Batson’s son’s case. Had Churchill made such a timely disclosure, the selectmen would then have had the opportunity to decide whether they wanted Churchill to handle the case or to refer the matter to the District Attorney or the Attorney General.